

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JOSEPH PAGAN,

Plaintiff,

-against-

C.I. LOBSTER CORP., JOSEPH MANDARINO,
RICHARD MANDARINO, and JOHN MANDARINO,

Defendants.
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Case No.: 1:20-cv-7349 (ALC) (SDA)

**DECLARATION OF
CHRISTOPHER BACA**

CHRISTOPHER BACA, pursuant to 28 U.S.C. § 1746, declares as follows:

1. Your declarant is a waiter or server of the Defendant C.I. Lobster Corp. (hereinafter “City Island Lobster House” or the “Restaurant”).
2. I have been a waiter at the Restaurant for about five years since May 2016.
3. On June 14, 2021, I spoke with an attorney Emanuel Kataev, Esq. (hereinafter “Mr. Kataev”) who is associated with Milman Labuda Law Group PLLC (hereinafter “MLLG”), who represents the Restaurant and other defendants named above (hereinafter the “Defendants”).
4. I was told by Mr. Kataev that the Defendants are conducting an inquiry to help them defend against a lawsuit brought by the Plaintiff Joseph Pagan (hereinafter “Pagan”).
5. I was told by Mr. Kataev that Pagan has brought a lawsuit on behalf of himself and others alleging that the Defendants did not properly pay Pagan and other employees of the Restaurant.
6. I was told by Mr. Kataev that, as part of the Defendants’ defense, MLLG wanted to ask me (and a number of other persons) questions.
7. Prior to asking me questions, MLLG read me the following statement and told me to first clearly understand that:

- a. MLLG's purpose is to investigate facts and prepare a defense for Defendants regarding the allegations referenced above;
- b. My participation or lack of participation in this investigation is voluntary and will in no way affect my rights as an employee of the Defendants;
- c. There will be absolutely no reprisals or other action taken against me by any of the Defendants because of any answers I might give or statements that I make;
- d. If I agree to participate, I may refuse to answer any of MLLG's questions or stop this conversation at any time without affecting any of my rights;
- e. There will be no rewards and no reprisals, regardless of whether I speak with MLLG or as a result of what I have to say;
- f. MLLG told me that it is not interested in ascertaining whether or not I am a union member or for or against a union, and positively asserts that I have the right to join or refrain from joining any labor organization without fear of reprisals; and
- g. MLLG told me that it is only interested in the truth.

My Employment with the Restaurant

- 8. I am a waiter at the Restaurant for five (5) years now.
- 9. Ever since the day I started working at the Restaurant, my work day begins by clocking in before I begin working.
- 10. After clocking in, I work my shift of about seven (7) hours per day.
- 11. Once in a while, I would perform double shifts of approximately ten or eleven (10 or 11) hours per day.
- 12. I only work double shifts when emergencies arise and people fail to come in as scheduled.
- 13. I also often work double shifts during holidays.

14. When I complete my work day, the last thing I do is clock out.
15. The time keeping system is electronic, has a camera which takes my picture every time I clock in or out, and keeps track of my weekly hours.
16. Whenever I worked more than forty (40) hours in a week, I received overtime compensation.
17. Because I received tips, my hourly wage is less as a result of the tip credit.
18. However, my tips more than make up for the difference between the tipped minimum wage and the regular minimum wage.
19. In fact, compared to what I earn in wages, the tips I earn completely dwarf that amount.
20. Every week on Saturday, I receive my pay for the work performed on the prior Monday through Sunday.
21. When I receive my pay, I also receive a pay stub which shows my hours worked, my hourly wages, my tips, and – if I worked a spread of ten or more hours per day – spread of hours compensation.
22. I have never not been paid for work that I performed.
23. I have never had an issue where I had to speak to management about missing pay or hours.
24. I hardly work any overtime so it was rare that I received it.
25. The Restaurant has been around for over forty years and is properly managed such that no one works overtime to avoid the unnecessary expense.
26. In fact, the only time I receive overtime compensation is during the holidays or summer months when it is very busy.
27. In 2019, prior to the corona virus pandemic, I estimate that I earned overtime compensation for only give (5) weeks in the entire year.

28. Whenever I worked overtime, I received overtime compensation at one-and-a-half times my hourly wage.

29. I have no doubt that I was properly paid by the Restaurant because it is a legitimate establishment that has been open for decades.

Pagan and His Lawyers Tried to Solicit Me to Join Their Lawsuit

30. On March 24, 2021, at 6:36 PM, I received a voice message from Pagan's lawyer, which said "Yeah hi this is Finn Dusenbery, an attorney for Joseph Pagan. Um, we represent Mr. Pagan against CI Lobster Corp. If you could just give me a call whenever you have a chance, my number is 6074371168, 6074371168 thank you very much bye."

31. I did not return this call.

32. Pagan's attorney also called me on March 29, 2021 and on April 1, 2021.

33. I did not return these calls, either.

34. On April 1, 2021 at 8:43 PM, I received a text message from Pagan's lawyer.

35. The text message said "Hi, this is Finn Dusenbery, I'm an attorney for Joseph Pagan against CI Lobster Corp. If you have a chance, please call me at 607-437-1168. Thanks." ✓

36. I told him I did not want to get involved in anybody's lawsuit and to not contact me anymore.

37. It is clear to me that Pagan and his attorneys want me to join their lawsuit against the Restaurant.

38. I have always been properly paid and love my job at the Restaurant; as a result, I do not want to sue them.

39. I do not even know how Pagan can claim he is entitled to any pay because he frequently called out and did not work at the Restaurant full time.

40. In fact, he never stayed a full shift and very often left early.

41. For example, he would start a shift at 6:00 PM and leave before 11:00 PM.

42. He did this as soon as it slowed down at the restaurant.

43. I always stay from 6:00 PM until closing and hardly ever earn overtime.

44. It is therefore questionable to me that Pagan, who always left early, would earn any overtime at all.

45. I don't appreciate the fact that Pagan's lawyers contacted me without me requesting that they do so to get me involved in a lawsuit that I do not want to be a part of.

46. Neither Pagan nor his lawyers ever asked me any questions or otherwise sought to interview me as a witness.

47. It was clear to me, especially by Pagan's attorney's message, that the purpose of him contacting me was to join the lawsuit.

48. I want Pagan and his attorney to stop contacting me.

49. I have read and understand this Declaration, affirm that the statements contained herein are true and based on my own personal knowledge, or that upon information and belief, I believe them to be true.

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I declare under penalty of perjury that the foregoing is true and correct. Executed on
June 14, 2021.


Christopher Baca

06/14/2021